

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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|--------------------------|---|------------------------|
| In the Matter of: |) | Docket HWCA 98/99-1004 |
| |) | |
| |) | |
| Department of General |) | CONSENT ORDER |
| Services |) | |
| California State Capitol |) | Health and Safety Code |
| Building |) | Section 25187 |
| 10th and "N" Street |) | |
| Sacramento, CA 95814 |) | |
| CAC001055128 |) | |
| |) | |
| Respondent |) | |
| |) | |
| |) | |
| |) | |

The State Department of Toxic Substances Control (Department) and the Department of General Services (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generates hazardous waste at 10th and "N" Street, Sacramento, California (Site).

2. The Department inspected the Site on February 24, 1998.

3. The Department alleges the following violations:

3.1. Respondent violated the Health and Safety Code, section 25201, subdivision(a), in that on or about February 24, 1998, Respondent operated a fluorescent tube crusher without a permit or authorization from the Department.

3.2. Respondent violated the Health and Safety Code, Section 25189.5(a), in that on or about February 24, 1998,

Respondent emptied a 55-gallon drum of crushed fluorescent tubes and a cloth bag of mercury dust into the municipal dumpster.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

SCHEDULE FOR COMPLIANCE

9.1 The violations have been corrected.

9.2 Submittals. All submittals from Respondent pursuant to this Order shall be sent to:

Douglas Hohman
Senior Hazardous Substances Scientist
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

9.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the

Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

9.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

9.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

9.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall

be extended for the term of such Stop Work Order.

9.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

9.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

9.9. Sampling, Data, and Document Availability:

Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

9.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by

Respondent or its agents in carrying out activities pursuant to this Consent Order.

9.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

9.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

9.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PENALTIES AND OFFSETS

10. The penalty in this case is \$28,000.

The Department has incurred costs of \$1,500. Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$1,500, in reimbursement of the Department's costs. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall be delivered together with attached Payment Voucher to:

Department of Toxic Substances Control

Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To: Douglas Hohman
Senior Hazardous Substances Scientist
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento California 95826

To: Marilee Hanson
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees. The remainder of this penalty, \$26,500, shall be offset by environmental credits based upon Respondent's obligation to undertake environmental enhancement projects above and beyond Respondent's commitment to comply with applicable environmental laws and regulations.

11.1 Environmental Credits

The Environmental credits shall be conditioned upon the completion of activities specified in Exhibit 1, attached.

11.2 Quarterly Status Reports

Within ninety (90) days of the effective date of this Order, and at three month intervals thereafter, Respondent shall

submit to the Department a report that details the progress of the approved project in Exhibit 1. This report shall contain information about project schedules, any difficulties with the project, any actions undertaken to resolved project's difficulties, and actions undertaken to accelerate the project or return it to schedule. The report will contain a list of planned work for the next three months. Respondent's obligation to provide quarterly reports shall cease upon completion of the project and approval by the Department.

11.3 Completion Report

At the completion of the projects, Respondent shall provide to the Department a report specifying the work done, documentation of its completion, including but not limited to an accounting of costs demonstrating compliance with Paragraph 11.1. Obligations under this section shall cease upon written approval of the completion report by the Department. The completion report shall be submitted no later than sixty (60) days from the completion of the activities, as specified in paragraph 11.1.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: If Respondent fails to comply with the terms of Sections 11 and 11.1 (including Exhibit 1), the Department shall notify Respondent of such noncompliance and Respondent shall have 60 days to correct such

noncompliance. If after 60 days Respondent has failed to correct such noncompliance, and upon such notice from the Department, Respondent shall pay to the Department \$26,500, which is the balance remaining after the \$1,500 in administrative expenses (paid by Respondent pursuant to Section 11) is deducted from the penalty of \$28,000.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: 12/21/02

[Original signed by Kenn Kojima]

Kenn N. Kojima, Deputy Director
Real Estate Services Division
Department of General Services

Dated: 12/30/02

[Original signed by Douglas Hohman]

Douglas Hohman
Senior Hazardous Substances Scientist
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control